

**IN THE DISTRICT COURT OF
BRAZORIA COUNTY, TEXAS**

United States Courts
Southern District of Texas
FILED

JUN 21 2024

Nathan Ochsner, Clerk of Court

CARLTON L. HATTON JR., QUINESHA M. WILKINS

Plaintiff(s),

v.

CEO - Kate deKay c/o EUSTIS MORTGAGE COMPANY,

Mauricio Pinto, Carment Pinto,

Matthew B. Edquist

Defendant(s).

Case No.: 3:24-CV-00064

AFFIDAVIT OF TRUTH

WRIT IN THE NATURE OF DISCOVERY AND DISCLOSURE

1. Now comes, We the People Carlton L. Hatton Jr. and Quinesha M. Wilkins hereby known as Plaintiffs, by and through Power of Attorney Orlando Acosta. I, Orlando Acosta object to Defendant(s) claim for use of Diversity Clause due to lack of substantive law as per 18 USC § 1621. With the predatory violation presented here; there is no way Diversity Clause can supersede these Federal Violations committed herein. We The People come before this court with good faith and clean hands, with writ to discovery of supporting evidence to dismiss previous claim, with no evidence on record ruling is invalid.
2. On August 09th, 2023 Plaintiffs signed a promissory note along with a mortgage creating a negotiable instrument to extend credit to alleged lender, as the borrower. As I, Orlando Acosta, am fully aware that the Bank did not have pre-existing credit, money, or assets as consideration to purchase the note or credit agreement from Plaintiffs. Pursuant to 12 USC 1431 Banks do not have the power to lend its credit or money.
3. When they deposited the Promissory note/Security with the alleged lender the original bookkeeping entry should show an increase in the amount of the asset credited on the asset side of its books and a corresponding increase equal to the value of the asset on the liability side of its books. This would show that the Bank received Plaintiffs signed promise to repay as an asset, thus monetizing (securitizing the note) their signature and

creating on its books a liability in the form of a demand deposit or other demand liability of the bank.

4. Securitization is the process whereby Mortgage loans (promissory notes) are turned into securities or bonds then sold to investors. The purpose is to provide a large supply of money to lenders for originating loans and to provide investments for bond holders. The procedure for selling of the notes is to create a situation whereby tax laws known as Real Estate Mortgage Investment Conduit Act are observed, and whereby the issuing entities and the lender are protected from either entity going into bankruptcy. In order to achieve this “bankruptcy remoteness” numerous “True Sales” of the loans occur in which the loans were sold and transferred to different parties during securitization.
5. A “True Sale” of the loan would be a circumstance whereby one party owe the note and then sold it to another party. An offer would be made, accepted and compensation given to the “seller” in return for the note. The note would be transferred and the mortgages assigned to the buyers of the Note, with an assignment or transfer made every step of the way, and furthermore, each note would be indorsed to the next party by the previous assignee or transferee of record.
6. REMIC is a complex pool of mortgage securities created for the purpose of acquiring collateral. This base is then divided into varying classes of securities backed by mortgages with different maturities and coupons. Both REMICs and Real Estate Investment Trust (REIT) are trust which issue securities (public, i.e., registered with the SEC, or private) in the form of stocks, bonds, certificates, etc. See *In re Fed. National Mortg. Ass’n Sec. Deriv. & ERISA litig.* 503 F.Supp.2d 1, (D.D.C. 2007) (a “REMIC” is a vehicle for issuing multi-class mortgage-backed securities that allows the issuer to treat the transaction as a sale of assets for tax and accounting purposes)
7. How a particular mortgage loan ends up being transferred to a REMIC in the securitization process is governed by a contract known as a Pooling and Servicing Agreement (PSA). PSA is a Trust Agreement required to be filed under penalty and perjury with the United States Securities and Exchange Commission (SEC) and which, along with another document, the Mortgage loan Purchase Agreement (MLPA), is the operative securitization document created by finance and securitization industry to memorialize securitization transactions.
8. Since the note has been securitized and given to a trust to provide a stream of income for investors, it follows the Note was voluntarily destroyed by bifurcation and any depositors were paid. As a matter of law where the payee and the owner of the promissory note has voluntarily destroyed the same, he cannot recover judgment against the maker either upon note itself, or upon the debt which was the consideration for which the note was given. See e.g. *Booth v Smith*, 3 Woods, 19 Circuit Court D. Louisiana (Nov. Term

1876). Once converted and sold it is impossible for a promissory note and Security Agreement to ever be whole again, existing as a negotiable instrument. That is to say once converted into a stock/security (or securitized), that act of conversion, impairs the validity and enforceability of a promissory note. It is destroyed and ceases to be a secure asset or negotiable instrument tied to any collateral or debt obligation. In the essence, the note is destroyed and thereby, under multiple rulings, is nullified and the underlying evidence and legality of the debt obligation secured by the note is voided whether or not the obligation has been paid. See e.g. *District of Columbia v. Cornell*, 130 U.S. 655(1889), *State Street Trust Co. V. Muskogee Electric Traction Co.* 204 (1953)

The Security is/are not backed by the mortgage because when the note was bifurcated from the mortgage or otherwise voluntarily destroyed at the time of conversion to securities, the security agreement is either satisfied or nullified. There are no other eventualities.

The note and mortgage is inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is nullity.

9. Unless you Defendants are the holder of the original Note and Mortgage you do not have power to enforce the note/instrument according to U.C.C. 3-301. And Since the note was destroyed by way of securitization or otherwise placed into a trust in which it cannot be removed you do not have possession to enforce the instrument, according to U.C.C. 3-604 after destroying the instrument all debts and obligations are now fully discharged.
10. All coupon notes (securities) by way of Constructive Trust are mailed to me as the investor, as I am the security holder with the right to enforce the instrument according to U.C.C. 3-301. As the equitable owner/creditor beneficiary of the note Plaintiffs deposited was securitized and transferred to a trust to raise capital funds. They have a right (beneficial use) to enforce the securities (coupon note/instrument) bearing their name and showing proof they are beneficial owner of the valued funds upon you as the promisee.
11. Claiming there is an alleged debt when the note was destroyed by way of securitization therefore fully discharging all debt between parties according to U.C.C 3-604 “(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, **destruction**, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.”

This is de dolo malo and misrepresentation of the material facts, the character and legal amount of debt. This is an ultra vires act, usurping powers that are not within your charter

nor authorized by law. Judge Roy Castillo ruled on two separate occasions to having no subject matter jurisdiction in this said title dispute. Again, with no new and or additional supporting evidence of proof of lawful possession to foreclose; Judge Roy Castillo on the third attempt ruled to enforce the illegal foreclosure eviction despite all counterclaims. Pursuant to 18 U.S. Code Ch. 96 – Racketeer Influenced and Corrupt Organizations, I am requesting proof of supporting evidence in this (bogus) ruling be brought forward for the record.

Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes “fraud”, and entities party deceived to avoid contract or recover damages. *Barnsdall Refining Corn. V. Birnam wood Oil Co.*, 92 F 2d 817.

It has been settled beyond controversy that a national bank, under federal law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires” *Howard & Foster Co. v. Citizens National Bank of Union*, 133 Sc 202, 130 SE 759 (1926)

Mr. Justice Marshall said: The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often. *Zinc Carbonate Co. V. First National Bank*, 103 Wis 125, 79 NW 229” *American Express Co. v. Citizens State Bank*, 194 NW 430

12. WHEREAS As all government entities and alleged private corporations must be a creature of the American Constitution, this is a formal Request and Command for and you to produce for the record, the Legislative Act that created your Authority to 1) enforce an instrument you have not shown proof of possession for, 2) to lend your money or credit, as required by Law. Take notice that a de facto basis for powers of authority is not sufficient in this matter. Failure to provide proof of your de jure authority constitutes your actions as ultra vires and by operation of law your charter is dissolved, a trust arises and we become beneficiary of said trust. Blacks law 6th edition Definition

Possession is nine-tenths of the law. This adage is not to be taken as true to the full extent, so as to mean that the person in possession can only be ousted by one whose title is nine times better than his, but it places in a strong light the legal truth that every claimant must succeed by the strength of his own title, and not by the weakness of his antagonist's.

Coupon notes - Promissory notes with coupons attached, the coupons being notes for interest written at the bottom of the principal note, and designed to be cut off severally and presented for payment as they mature.

Coupons - are written contracts for the payment of a definite sum of money on a given day, and being drawn and executed in a form and mode for the purpose, that they may be separated from the bonds and other instruments to which they are usually attached, it is held that they are "negotiable" and that a suit may be maintained on them without necessity of producing the bonds. Each matured coupon upon a negotiable bond is separable promise, distinct from the promises to pay the bonds or other coupons, and gives rise to a separate cause of action. *Thompson V. Perrine*, 106 U.S. 589, 1 S.Ct. 564, 27 L.Ed. 298.

Fund or Funds - To capitalize with a view to the production of interest. Also, to put into the form of bonds, stocks, or other securities, bearing regular interest, and to provide or appropriate a fund or permanent revenue for the payment thereof. An asset or group of assets set aside for a specific purpose. To fund a debt is to pledge a specific fund to keep down the interest and reduce the principal.

Stock - The goods and wares of a merchant or tradesman, kept for sale and traffic. In a larger sense, the capital of a merchant or other person, including his merchandise, money, and CREDITS, or, in other words, the entire property employed in business.

(Mutual Funds) Income Funds - Mutual fund consisting of securities that provide periodic dividends or coupon payments; they usually consist of coupon bonds; they are designed to provide investors with a stable income. (Black law 6th edition)

Equitable owner - one who is recognized in equity as owner of the property, because real and beneficial use and title belong to him, even though bare legal title is invested in another. *Levin Carney*, 120 N.E. 2d 92,96 161 Ohio St. 513 (Black law 6th edition)

Equitable Ownership - The ownership interest of one who has equitable as contrasted with legal ownership of property as in the case of a trust beneficiary. Ownership rights which are protected in equity. (Black law 6th edition)

Equitable Interest- The interest of a beneficiary under a trust is considered equitable as contrasted with the interest of the trustee which is a legal interest because the trustee has as contrasted with equitable title Restatement, second, trusts. (Black law 6th edition)

Beneficial interest - Profit, benefit, or advent resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his own use or benefit, and not as holder of title for use and benefit of another. In trust law, refers to interest of the beneficiary in right to income or principal of trust funds, in contrast to trustee who holds legal title.

Beneficial use - The right to use and enjoy property according to one's own liking or so as to derive a profit or benefit from it, including all that makes it desirable or habitable, as

light, air, and access; as distinguished from a mere right of occupancy or possession. Such right to enjoyment of property where legal title is in one person while right to such use or interest is in another. *Christiansen v. Department of Social Security*, 15 Wash.2d 465, 131 P.2d 189, 191.

Beneficiary- One who benefits from act of another. A party who will benefit from a transfer of property or other arrangement. Examples include the beneficiary of a trust, the beneficiary of a life insurance policy, and the beneficiary of an estate.

Credit Beneficiary- A “beneficiary” of Credit is a person who is entitled under its terms to draw or demand payment. U.C.C. 5-103(d)

Constructive Trust- Trust Created by operation of law against one who by actual or constructive fraud, by duress or by abuse of confidence, or by commission of wrong, or by any form of unconscionable conduct, or other questionable means, has obtained or holds legal right to property which he should not, in equity and good conscience, hold and enjoy. *Davis v. Howard*, 19 Or. App. 310 527 P.2d 422, 424

A Constructive trust is a relationship with respect to property subjecting the person by whom the title to the property is held to an equitable duty to convey it to another on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property.

Conclusion: Do you have the original security agreement/promissory note (negotiable instrument) in your possession to enforce the instrument to seek payments of a debt? Can you prove that you did not discharge all debts by destroying the note by way of securitization? Can you prove the note that was sold, securitized and placed in a constructive trust is not for my benefit as the equitable owner? If not, the ruling of the lower court should be overturned.

NOTICE: Any and all attempts at providing the requested and necessary Proof of Claims raised herein above; and, requesting the additional ten (10) business days in which to provide same.

The Undersigned extends to the Respondent(s) the Undersigned’s appreciations and thanks for Respondent’s(s) prompt attention, response, production of above Proof(s) of Claim and assistance in this/these matter(s). This presentment is not to be construed as an acceptance and/or application and/or subscription and/or request for license, admittance to any jurisdiction quasi-or otherwise; but shall remain as a direct objection to any and all claims to the contrary.

Relief sought:

- 1). Plaintiffs wish to be rewarded title and possession of property described herein

2). Damages in the sum of one hundred million USD \$100,000,000.00, Pursuant to 15 USC Code 1 Trust, etc., in restraint of trade illegal; penalty

I declare under penalty and perjury under the U.S. Constitution that all is correct to the best of my knowledge. Respectfully submitted,

By: _____ Signature is my seal

Power of Attorney Orlando Acosta on behalf of Plaintiff(s) Carlton L. Hatton, JR.,
Quinesha M. Wilkins

Prepared By:

Orlando A. Acosta - Power of Attorney
for Carlton Hatton Jr., Quinesha Wilkins
c/o 5355 Belfield Ave Philadelphia, Pennsylvania [19144]
Ph: 267-255-3781
Email: themortgageeliminator@gmail.com